

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 5112 of 2015 (L)

PETITIONER(S):

**ACCELERATED FREEZE DRYING CO.LTD,
EP/XI/184, EXHUPUNNA, CHERTHALA,
ALAPPUZHA DISTRICT, REP.BY ITS VICE PRESIDENT**

**BY ADVS.SRI.C.K.KARUNAKARAN
SRI.JOPHY POTHEEN KANDANKARY**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP.BY TAXES SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE INTELLIGENCE INSPECTOR,
SQUAD NO.4, OFFICE OF THE DEPUTY COMMISSIONER (INTELLIGENCE),
DEPARTMENT OF COMMERCIAL TAXES,
EDAPALLY, COCHIN-682014.**

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF INVOICE NO.002 DATED 12-02-15 DELIVERY NOTE DATED 12/2/15 AND E-CONSIGNMENT DECLARATION**
- P2: COPIES OF INVOICE NO.003 DATED 12/2/15 DELIVERY NOTE DATED 12/2/15 AND E-CONSIGNMENT DECLARATION**
- P3: COPY OF NOTICE NO.734 DATED 12/2/15**
- P4: COPY OF NOTICE NO.733 DATED 12/2/15**
- P5: COPY OF PETITIONER'S REPLY NO.AFD/FIN/6 DATED 13/2/15 TO EXHIBIT P3 NOTICE**
- P6: COPY OF PETITIONER'S REPLY NO.AFD/FIN/6 DATED 13/2/15 TO EXHIBIT P4 NOTICE**
- P7: COPY OF THE ANNEXURE TO CERTIFICATE OF REGISTRATION VALIED UP TO 31 MARCH 20-15**
- P8: COPY OF 2ND RESPONDENT'S LETTER NO.14/2/15**
- P9: COPY OF JUDGMENT DATED 8/6/14 OF THIS HON'BLE COURT IN WPC.9030/14**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.5112 of 2015
.....

Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner, who is a registered under the Kerala Value Added Tax Act is aggrieved by Exts.P3 and P4 detention notices issued to him detaining a consignment of used diesel generator sets that was being transported from Cochin to Coimbatore at the instance of the petitioner. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.Karunakaran C.K., the learned counsel for the petitioner and Sri.Sudheesh Kumar, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with the following directions:

(i) On a perusal of Exts.P3 and P4 notices, it is seen that the objection of the respondents is essentially with regard to the goods that were being transported not being expressly covered by the

registration certificate granted to the petitioner. It is the contention of the respondents that what was being transported was used diesel generator sets and the registration certificate enabled the petitioner to deal only in electric generator sets. It is on this basis that the respondents took objection to the petitioner clearing the goods on payment of 2% CST as against the regular rate of CST which would have been leviable if there was no 'C' Form that was produced by the consignee. It is not in dispute, however, that the petitioner is a registered dealer in the State, and that the diesel generating set that was being transported by him consequent to sale to a party in Coimbatore, was a machinery that was being used by him for the purposes of manufacture.

(ii) Taking note of the said facts, I am of the view that the petitioner can be permitted to transport the goods on furnishing a simple bond without surety before the 2nd respondent. Accordingly, the 2nd respondent is directed to release the goods and the vehicle to the petitioner on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Exts.P3 and P4 notices, before the 2nd respondent.

(iii) The 2nd respondent shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass

orders, after hearing the petitioner, within two months from the date of receipt of a copy of this judgment, untrammelled by the observations in this judgment.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the respondents.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

